

(2015) 01 KAR CK 0037
In the Karnataka High Court
Case No : Criminal Appeal No. 1249/2011

State by Rural Police Station

APPELLANT

Vs

Udaya and Others

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34, 364, 365

Citation : (2015) 01 KAR CK 0037

Hon'ble Judges : Mohan M. Shantana Goudar and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : Chetan Desai, HCGP, for the Appellant; Umesh for R.B. Deshpande, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantana Goudar, J.—The judgment and order of acquittal dated 30.7.2011 passed by the Sessions Judge, I Fast Track Court, Shimoga in Sessions Case No. 94/2009, is called in question, in this appeal, by the State.

The accused were tried and acquitted of the offences punishable under Sections 364, 365, 302, 201 read with Section 34 of IPC.

2. Case of the prosecution in brief is that accused No. 1 and deceased-Sudhakara Shetty were not in good terms; P.W. 7-a relative of the deceased was a tenant in a house owned by accused No. 1; accused No. 1 used to harass P.W. 7-Kalavathi by teasing her; she decided to vacate the house and consequently she asked accused No. 1 to give back the advance amount paid by her at the time of occupying the house; the advance amount was not paid by accused No. 1; in that context, the deceased being a relative of Kalavathi, intervened and he held talks with accused No. 1 number of times. However, accused No. 1 was aggrieved by the intervention of the deceased in the matter of Smt. Kalavathi - P.W. 7. Consequently, he has planned to commit the murder of the deceased with the help of accused Nos. 2 to 5.

In the evening of 2.1.2009, when the deceased-Sudhakara Shetty was coming on his motor cycle bearing registration No. KA-14-TR-5974, all the accused allegedly kidnapped the deceased and took him to a Neelagiri Plantation at Kommanal Village on a motor cycle and committed the murder by throttling his neck with a red coloured belt of the deceased, set his dead body on fire after pouring petrol and destroyed the evidence.

Wife of the deceased Smt. Latha (P.W. 1) lodged a complaint as per Ex. P1 on 4.1.2009 alleging missing of her husband; in the said complaint (first complaint), it is mentioned by P.W. 1 that a quarrel had taken place between the deceased and accused No. 1 in the matter of getting the house of Kalavathi vacated; that the deceased had informed to the Police that on the previous night, a threatening telephone call was received by P.W. 1; however from the next day, the accused was missing. The complaint-Ex. P1 came to be registered in Crime No. 2/2009 of Rural Police Station, Shimoga.

3. Another complaint (second complaint) was filed by P.W. 1 as per Ex. P3 before Superintendent of Police on 8.1.2009 which came to be registered in Crime No. 4/2009 (FIR Ex. P32). In the said complaint, allegations are made specifically as against accused Nos. 1 and 2. During the course of investigation, the skeleton of a dead body was recovered at the instance of accused No. 3 on 13.1.2009. The police after investigation laid the charge sheet.

4. In order to prove its case, the prosecution in all examined 23 witnesses and got marked 37 exhibits and 11 material objects. On behalf of the defence, two exhibits were got marked. As aforementioned, the trial Court acquitted the accused.

5. Sri Chetan Desai, learned HCGP for the appellant/State taking the Court through the material on record and the judgment of the Court below submits that all the circumstances relied upon by the prosecution are proved beyond reasonable doubt so as to complete the chain of circumstances; the chain of circumstances so proved will not give rise to any doubt as against the accused in the complicity of the crime. According to him, the reasons assigned and the conclusion arrived at by the trial Court are improper and incorrect.

Per contra, Sri Umesh, learned Counsel for the respondents/accused argued in support of the judgment passed by the Court below.

6. P.W. 1-Latha, is the wife of the deceased. She lodged two complaints as per Ex. P1 and Ex. P3. Even in the missing complaint, the allegations are made against accused No. 1 to certain extent. Both the letters at Exs. P2 and P4 are also marked. Ex. P2 is the letter of the deceased dated 1.1.2009, wherein, he has stated that he has got life threat from accused No. 1 and his friends.

Ex. P4 is the letter of Kalavathi, which is stated to have been found in the pocket of accused No. 1. The said letter of Kalavathi (P.W. 7) states that there was a dispute between herself and accused No. 1 with regard to vacating the house;

that as the deceased intervened in the matter and acted in favour of Kalavathi, both the deceased as well as Kalavathi are facing life threat from accused No. 1 and his friends.

P.W. 2-Ravi, is a witness for panchanama dated 9.1.2009 at Ex. P5. The said panchanama was drawn in respect of the spot, wherein, the two wheeler of the deceased was found lying near a water channel.

P.W. 3-Nagaraja, is another mahazar witness for panchanama-Ex. P6 dated 13.1.2009. The said panchanama relates to the place, wherein, the skeleton of the deceased-Sudhakar Sheety was lying.

P.W. 4 - Suresha, brother of the deceased, is a witness for recovery mahazar-Ex. P7 under which the weapon - MO.4 is recovered from the house of accused No. 2 at his behest. He is also a witness for recovery of the skeleton of the dead body of the deceased.

P.W. 5-Mohana Reddy, is a friend of the deceased; he is a witness for mahazar-Ex. P8 under which a belt and a key bunch-MOs. 2 and 3, respectively were recovered from the spot, wherein, the dead body was lying at the instance of accused No. 3. He is also a witness for inquest panchanama-Ex. P6 relating to the spot, wherein, the dead body was found.

P.W. 6-Jagadeesha, is a witness for a letter marked as Ex. P4. The said letter is allegedly written by Kalavathi -P.W. 7 to the Police complaining about threat to life to himself and deceased - Sudhakara Shetty. He is also the witness for Mahazar-Ex. P11, under which a mobile phone and 2 sim cards apart from the motor cycle of accused No. 1 were seized. So also he is a witness for Ex. P7 under which MO No. 4 (steel bangle) was recovered and seized at the instance of accused No. 2.

P.W. 7-Smt. Kalavathi, is a tenant under accused No. 1. She has deposed about the earlier incident and about her life threat by accused No. 1 against the deceased and herself.

P.W. 8-Vinodakumar; P.W. 9-Nagaraja; P.W. 10-Sridhara; P.W. 11-Lawrence; P.W. 13-Krishna; P.W. 14-Selvakumar; P.W. 15-Venkatesha & P.W. 16-Raju, have turned hostile to the case of the prosecution. They were all the witnesses, who were supposed to depose about the extra judicial confession regarding the panchayaths held in the Police Station to pacify the quarrels between the accused No. 1 and Kalavathi; about the accused taking the motor cycles; about the accused No. 1 purchasing the petrol from the petrol bunk etc. It is the case of the prosecution that accused No. 1 purchased the petrol from the petrol bunk of P.W. 15 and took the deceased on a motor cycle; after the incident, accused Nos. 1 and 2 have allegedly made extra judicial confession etc., However all the witnesses pertaining to these circumstances have turned hostile.

P.W. 12-Nagendra, was a colleague working in the office along with the deceased. He has produced a chit No. 2 stated to have been written by deceased. The said

chit is to have been found in the table drawer of the deceased and the said chit was handed over by P.W. 12 to the wife of the deceased. He is also the witness for Exs. P4 and P7.

P.W. 17-Selvakumar is the Doctor, who has deposed about the conducting of DNA (Deoxyribo Nucleic Acid) test to identify the dead body. He has deposed that the DNA of the dead body was tallying with the DNA of the son of the deceased.

P.W. 18-Dr. Rudramurthy, is the Doctor, who conducted the post-mortem examination. The post mortem report is at Ex. P28.

P.W. 19-Naveen Kumar, is the Head Constable, who apprehended all the accused.

P.W. 20-Devaraja, is the PSI, who registered the first information report based on Ex. P3 as per Ex. P32.

P.W. 21-Mohan is the Police Constable, who participated in the investigation at different levels.

P.W. 22-Seethamma is the owner of the shop, wherein, the deceased was running his shop-cum-office. She has turned hostile to the case of the prosecution.

P.W. 23-V.S. Siddalingappa, is the Investigating Officer, who completed the investigation and laid the charge sheet.

7. The circumstances relied upon by the prosecution are as under:--

"(a) Motive for commission of the offence -the said circumstance is deposed by P.Ws. 1 and 7;

(b) Recovery of belt and key bunch of the deceased;

(c) Recovery of skeleton remains of the deceased- the recoveries are conducted at the instance of accused No. 3. P.Ws. 3, 4 and 5 are the witnesses, who deposed about the said circumstances.

(d) Recovery of the weapons at the instance of accused No. 2 from his house.

P.Ws. 4 and 6 have deposed about the said circumstance;

(e) The DNA of the son of the deceased matches with the DNA of the deceased - the Scientific Officer - P.W. 17 has deposed as per Ex. P21.

(f) Abscondence of the accused - according to the prosecution, the accused have absconded for about 12 to 20 days."

8. In respect of circumstance relating to motive -we have got the evidence of P.Ws. 1 and 7 apart from the documents at Exs. P1 to P4.

On meticulous perusal of the evidence of these witnesses and the documents - Exs. P1 to P4, we find that the accused No. 1 and the deceased were not in friendly terms. On the other hand, they were quarrelling in the matter of getting

the house of P.W. 7, vacated. The suggestion is made by the defence to prosecution witnesses that the deceased was a characterless and was a womanizer. However, such suggestion is denied by the witnesses.

Be that as it may, the materials on record make it clear that accused No. 1 and the deceased were quarrelling with each other and they had even approached the police station number of times. But the motive is confined to accused No. 1 only. However, it has to be noted that the accused No. 2 is the brother of accused No. 1. There is no motive as against other accused for commission of the crime. So also, we do not find sufficient evidence to show that accused Nos. 3 to 5 were friendly with accused Nos. 1 and 2. The material on record is not sufficient to show that accused Nos. 3 to 5 were close friends of accused Nos. 1 and 2.

9. So far as the recovery of belt and key bunch of the deceased as well as the recovery of skeleton remains as spoken to by P.Ws. 3, 4 and 5 are concerned, the trial Court has evaluated the material on record in proper perspective. It is the case of the prosecution that accused No. 3 stated before the police as per Ex. P35 to the effect that, he would show the place, wherein, the accused have burnt the dead body. Based on that statement-Ex. P35, the police took accused No. 3 to the particular spot and recovered the skeleton remains of the deceased, wherein, the belt and key bunch are also found.

It is not in dispute that P.Ws. 3, 4 and 5 and accused are known to each other. These witnesses have deposed that the police and accused No. 3 sat in one jeep; the jeep of police was followed by another jeep of P.W. 5; P.W. 4 and his younger brother followed those aforementioned 2 jeeps on a motor cycle. All the witnesses have deposed that the two jeeps and the motor cycle left Rural Police Station, Shimoga during the relevant time on 13.1.2009 and went to the spot, wherein, the skeleton remains were found. In the cross examination, P.W. 4 has clearly admitted that by the time they were on the spot, the police were already there and were conducting spot inspections; 30 to 40 persons had already assembled on the spot and were wandering here and there in the Neelagiri Plantation (Eucalyptus Plantation); the skeleton remains were already found by the time they visited the spot and the police were writing the panchanama; this admission of P.W. 4 completely takes away the aspect of recovery of the dead body. Since the dead body was already found prior to accused No. 3 visiting the spot along with the police, it cannot be said that the dead body was recovered at the instance of accused No. 3. At the most it can be said that the dead body was seized during the course of investigation. Hence, the trial Court is justified in concluding that the prosecution has not proved the circumstance relating to recovery of dead body at the instance of accused No. 3.

10. Insofar as the recovery of weapons at the instance of accused No. 2 is concerned, the prosecution relies upon the evidence of P.Ws. 4 and 6. P.W. 4 is none other than the brother of the deceased. In the cross-examination, he has deposed that the door of the house of the accused No. 2 was open and his mother was in the house; there were 3 to 4 persons outside his house; the PSL,

entered the house and P.Ws. 5 and 6 followed the PSL, about 7 to 8 neighbours assembled on the spot; however, none of the neighbours were enquired into the matter. At that point of time, accused No. 2 was hand cuffed and even when while going back to the Police Station, the accused No. 2 was hand cuffed. The aforementioned evidence makes it clear that the house was open and there were number of persons both inside as well as outside of the house. Moreover, there is nothing on record to show as to how the weapon allegedly seized at the behest of accused No. 2 was used of commission of the offence. It is the specific case of the prosecution that the neck of the deceased was throttled with the help of the belt worn by the deceased himself and thereafter the dead body was burnt. Even otherwise no weapon is produced before the Court and marked as material object. Hence, it is clear that there is no material to show that any weapon is used much less the weapons recovered from accused No. 2 for commission of the offence. Therefore, the said circumstance also fails.

11. In respect of the evidence of P.W. 17-the scientific officer, we do not find any ground to reject his evidence. He is an independent officer in the State. He has conducted the DNA test and has concluded that the DNA of the dead body matches with the DNA of the son of the deceased. Looking to the scientific officer's report -Ex. P21 coupled with the evidence of P.W. 17, we are of the opinion that the evidence with regard to DNA test cannot be doubted.

12. The last circumstance is abscondence of the accused. According to the Investigating Officer - accused Nos. 1 and 2 were arrested on 20.1.2009, accused No. 3 was arrested on 13.1.2009 and accused Nos. 4 and 5 were arrested on 14.1.2009. The incident has taken place on 2.1.2009. Thus, according to the prosecution, the accused were absconding from 11 days to 18 days. But there is no material to show that the accused were absconding. Merely because they are apprehended belatedly it cannot be presumed that they absconded. No material is produced before the Court that the police made attempts to search for the accused prior to their arrest. Therefore, it cannot be said that the accused absconded for the aforementioned period.

13. Looking to the totality of the facts and circumstances of the case, we find that out of the five circumstances relied upon by the prosecution, it is successful in proving two circumstances i.e., motive and the DNA test report. Even assuming that the skeleton seized during the course of investigation is that of the deceased; the same cannot connect the accused to the crime. Except the circumstance of motive connecting accused No. 1 to the motive, no other circumstance connecting the accused to the crime is proved by the prosecution. Based on these aforementioned materials, it may not be possible to conclusively state that the accused are responsible for commission of offence. Motive, if any, is wholly against accused No. 1 and not against any other accused. Merely because of the fact that there used to be quarrels between the deceased and accused No. 1, it cannot be conclusively said that it was accused No. 1 who committed the murder of the deceased because of the animosity. Hence, even on

re-appreciating the material on record, we find that the trial Court is justified in acquitting the accused by giving a benefit of doubt.

14. The view taken by the trial Court is one of the possible views in the facts and circumstances of the case.

Accordingly, the appeal fails and the same stands dismissed.